**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Jurisdictional Separations and Referral to the Federal-State Joint Board | ) ) | CC Docket No. 80-286 |
| | ) | |
| Comprehensive Review of the Part 32 Uniform System of Accounts | ) ) | WC Docket No. 14-130 |

## COMMENTS

CenturyLink, Inc., on behalf of itself and its affiliates, submits these comments in response to the Federal Communications Commission's (Commission) two *Public Notices* released on April 24, 2017. The *Public Notices* seek comments: (1) refreshing the record on issues related to comprehensive permanent separations reform including a March 2010 Separations Proposal of the State Joint Board Members,[1] and (2) addressing how the recent reforms to the Commission's Part 32 rules impact Part 36 rules.[2]

## I. INTRODUCTION AND SUMMARY

The Commission's existing Part 36 Jurisdictional Separations Rules[3] were created at a time when telecommunications carriers were rate-of-return regulated at both the state and federal level and when the allocation of costs between state and federal jurisdictions was essential to assuring just and reasonable rates.

---

[1] *Federal-State Joint Board on Jurisdictional Separations Seeks to Refresh Record on Issues Related to Jurisdictional Separations*, CC Docket No. 80-286, Public Notice, FCC 17J-1 (rel. Apr. 24, 2017).

[2] *Federal-State Joint Board on Separations Seeks Comment on Referral for Recommendations of Rule Changes to Part 36 as a Result of Commission Revisions to Part 32 Accounting Rules*, WC Docket No. 14-130, CC Docket No. 80-286, Public Notice, FCC 17J-2 (rel. Apr. 24, 2017).

[3] 47 C.F.R. § 36.

In its *2001 Separations Freeze Order*, the Commission froze those rules, on an interim basis, for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.[4]

Since then, the separations freeze has been extended several times, and most recently, on May 15, 2017, the Commission extended the freeze until December 31, 2018.[5]

In March 2010, the State Members of the Separations Joint Board submitted a Separations Proposal (2010 State Members Proposal) to address perceived deficiencies in the Commission's Part 36 Separations Rules.[6] They proposed that the separations rules be revised so that special access investment would be directly assigned and proposed that additional subcategories within the Cable and Wire Facility category be created to reflect the jurisdictional assignments of, and revenues produced by, advanced and other services that had become prevalent when the 2010 State Members Proposal was made.[7] The State Members also proposed to categorize loops according to the service provided over them, and then to apply distinct fixed separations factors to each category.[8]

At least two other developments have taken place since 2010 that should be considered when weighing whether to address potential problems with the Part 36 rules. First, on November

---

[4] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001)(*2001 Separations Freeze Order*).

[5] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 2017 FCC LEXIS 1488 (rel. May 15, 2017).

[6] Letter from Steve Kolbeck, Commissioner, State Chairman, Federal State Joint Board on Separations, South Dakota Public Utilities Commission, on behalf of the State Joint Board Members, to Mignon Clyburn, Chair, Federal State Joint Board on Separations, Commissioner, FCC and Marlene H. Dortch, Office of the Secretary, FCC, CC Docket No. 80-286 (filed Mar. 5, 2010), and attached Separations Proposal of the State Joint Board Members.

[7] *See, e.g., id*., Separations Proposal of the State Joint Board Members, at 7-9.

[8] *See, e.g., id*., at 11-15.

18, 2011, the Commission adopted its *USF/ICC Transformation Order*[9] that substantially reformed the Commission's intercarrier compensation (ICC) and universal service (USF) rules. Second, on February 23, 2017, the Commission revised and streamlined certain rules found in its Part 32 Accounting Rules.[10]

Now is not the time for the Commission to start investing resources in reforming the Part 36 Jurisdictional Separations Rules. Deregulation and ICC/USF reform in recent years have greatly reduced the applicability of the rules and the need for them. Given their limited purpose and function, the current separations rules continue to be as effective as they have ever been to properly allocate costs – for the carriers for whom they remain relevant. Moreover, as described more fully below, any problems with the separations rules cannot be remedied by mere tinkering.

Separations rules are necessary only because, under rate-of-return regulation, rates are based on jurisdictionally allocated costs. To the extent a carrier is not under cost-based regulation by the Commission or any state commissions, separations has no impact on rates (i.e., service prices) since prices are not based on jurisdictionally allocated costs.

The 1996 Act dictates a path toward less and less regulation in the local telecommunications marketplace. Separations can and should eventually become wholly unnecessary. But, so long as some carrier somewhere could be subject to rate-of-return or other

---

[9] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund,* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (subsequent history omitted)(*USF/ICC Transformation Order*).

[10] *Comprehensive Review of the Part 32 Uniform System of Accounts, Jurisdictional Separations and Referral to the Federal-State Joint Board*, WC Docket No. 14-130, CC Docket No. 80-286, Report and Order, FCC 17-15, 32 FCC Rcd 1735, (rel. Feb. 24, 2017)(*Part 32 Order*).

cost-based regulation, separations of some form will be needed. Therefore, the key question is how to best manage jurisdictional separations until they become completely unnecessary.

A continued freeze is still the best answer on the table when it comes to striking the right policy balance on jurisdictional separations.

## II. DEFICIENCIES IN THE SEPARATIONS RULES CANNOT BE REMEDIED BY TINKERING – AND NEED NOT BE REMEDIED AT THIS POINT IN TIME

As CenturyLink has previously noted, the current separations rules reflect policy compromises developed over the last seven decades – long before today's increasingly competitive telecommunications market which is characterized by rapid changes in technology. The separations rules in effect prior to July 1, 2001, when the separations freeze went into effect, were developed in an era of a single provider when rate-of-return regulation was the norm in both federal and state jurisdictions. Neither today's telecommunications markets nor today's regulation bear much resemblance to such an environment.

At the same time, problems with the Commission's Part 36 rules cannot be remedied by "tinkering" or adjustments such as those proposed by the State Members. Trying to fine tune existing separations rules to reflect rapid changes in telecommunications markets and technology is likely to be a futile task and not one on which the Commission should embark. This should be kept in mind in particular when considering proposed revisions to the separations rules to address isolated "alleged" cost allocation anomalies that may exist for particular services such as unbundled network elements (UNEs), digital subscriber lines (DSL), special access/private lines and Internet traffic.

CenturyLink is also skeptical that even a major overhaul of the separations rules would serve any useful purpose. Telecommunications markets and technology are changing too fast. A major overhaul, even if it "fixed" the current separations rules that have been frozen since 2001, would soon become outdated and subject to criticism for not producing the "right" answer. The desire to produce the "right" answer is what led to the great complexity of the current separations rules in the first place. Attempting to replace the existing rules with a new set of complex rules is unlikely to be beneficial. And, while outdated, the existing rules remain adequate to serve any remaining separations need.

Competition also continues to increase in telecommunications markets generally, and services at both the state and federal level have increasingly become deregulated. In recent years, the Commission has taken significant incremental steps narrowing the applicability of the Part 36 jurisdictional separations rules consistent with reduced regulation. In 2008, the Commission conditionally granted petitions for forbearance from the Part 36 separations rules to AT&T, BellSouth, Verizon and Qwest.[11] In 2013, the Commission extended the conditional forbearance grant to the remaining price cap ILECs.[12] The separations rules now apply only to some small and mid-sized ILECs.

In previous comments, Qwest Corporation d/b/a CenturyLink QC supported continuation of the Commission's separations freeze until the Commission completed its reform of the ICC

---

[11] *See* Petition of AT&T Inc. for Forbearance under 47 U.S.C. §160 from Enforcement of Certain of the Commission's Cost Assignment Rules; Petition of Bellsouth Telecommunications, Inc. for Forbearance under 47 U.S.C. §160 from Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket Nos. 07-21 et al., Memorandum Opinion and Order, 23 FCC Rcd 7302, 7307, ¶12 (2008); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190 et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647, 13662-63, ¶ 27 (2008).

[12] *Petition of USTelecom for Forbearance Under 47 U.S.C. §160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, et al., WC Docket No. 12-61, et al., Memorandum Opinion and Order, and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7646-54, ¶¶ 31-51 (2013), *pet. for rev. denied sub nom*, *Verizon & AT&T Inc. v. FCC*, 770 F.3d 961 (D.C. Cir. 2014).

and USF Rules.[13] The Commission is now nearing completion of its reforms of its ICC and USF rules.

However, now is not the time for the Commission to start investing resources in reforming the separations rules. Deregulation and ICC/USF reform in recent years have greatly reduced the applicability of the rules and the need for them. Given their limited purpose and function, the current separations rules continue to be as effective as they have ever been to properly allocate costs – for the carriers for whom they remain effective. *Smith v. Illinois Bell* stands for the proposition that there must be some sort of "jurisdictional symmetry" between revenues and costs.[14] And, the Commission has wide latitude in modifying existing separations rules. For example, the Commission, in past Orders freezing Part 36 factors and category relationships, has found that an "interim" freeze was consistent with *Smith v. Illinois*.[15] Thus, as long as the Commission engages in "reasoned decision-making," the Commission has wide latitude as to how it satisfies the requirement in *Smith v. Illinois* that there be some sort of "jurisdictional symmetry" between revenues and costs.

## III. THE PART 36 RULES WILL EVENTUALLY BECOME IRRELEVANT

As noted, deregulation and ICC/USF reform in recent years have greatly reduced the applicability of the rules and the need for them. Given their limited purpose and function, the current separations rules continue to be as effective as they have ever been to properly allocate costs – for the carriers for whom it remains relevant. Separations rules have been necessary only

[13] *See* Comments of Qwest Corporation, Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286 (filed Apr. 19, 2010).

[14] *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930).

[15] *Separations Freeze Order*, 16 FCC Rcd at 11392-93 ¶ 17. In doing so, the Commission reiterated that "*Smith v. Illinois* does not require absolute precision in the separations cost allocation process." *Id.*

because, under rate-of-return regulation, rates are based on jurisdictionally allocated costs. To the extent a carrier is not under cost-based regulation by the FCC or any state commissions, separations has no impact on rates (i.e., service prices) since prices are not based on jurisdictionally allocated costs. The 1996 Act dictates a path toward less and less regulation in the local telecommunications marketplace. And, as the industry and the Commission continue down this path, separations can and should eventually become wholly unnecessary. But, so long as some carrier somewhere could be subject to rate-of-return or other cost-based regulation, separations of some form will be needed. Therefore, the key question is how to best manage jurisdictional separations in the meantime.

For the reasons described above and below, a continued freeze is still the best answer on the table when it comes to striking the right policy balance on jurisdictional separations. If the current freeze to the separations rules is lifted and the rules are modified to correct perceived deficiencies, it will likely impose a significant burden on carriers who remain subject to the rules. The policy rationale for the *Part 32 Order* supports *not* performing significant changes to the separations rules now.

The Commission's *Part 32 Order* allows price cap carriers to elect to use GAAP for all regulatory accounting purposes and streamlines the Uniform System of Accounts (USOA) for all carriers.[16] One change the Commission made to streamline the USOA was to consolidate the Class A and Class B accounts to reduce the number of accounts carriers must maintain. The Commission, in the *Part 32 Order*, suggests that this change impacts separations because the current separations rules designate accounts by Class A and Class B categories. And, it asks whether the consolidation, in the Order, of Class A and Class B accounts requires that the

[16] *Part 32 Order*, ¶ 12.

separations rules be modified to be consistent with the revised Part 32 regulations.[17] The Commission referred this issue to the Joint Board to determine what changes need to be made in light of the reforms adopted in the *Part 32 Order*. It's not clear that this reform requires modifications to the rules. And, whatever it does, the Commission should keep modifications to those minimally necessary and should keep in mind that it adopted the *Part 32 Order* in order to minimize the compliance burden on carriers.[18]

Even at the state level, there is very little if any continuing need for fully separated results. The approach described above would leave the current separations rules in effect for any remaining context where that is relevant. And, increasingly, any state accounting needs are so limited that they are worked-out on a one-off basis with companies and there is no evidence that states are not getting the accounting data they need. But, leaving the rules in place as they are will ensure that, in no event, will a situation be created where the same investment is split between two different jurisdictions in two different ways. The Commission has preempted the field of separations and states may not adopt inconsistent jurisdictional cost allocation rules that could lead to changing inter/intrastate cost assignments – even with the Commission's past forbearance in this area.[19] As Verizon observed in its past comments on accounting forbearance, "[p]ermitting states to engage in such reallocation would undermine not only the freeze, but the

---

[17] *Id.*, at ¶ 46.

[18] *Id.*, at ¶ 2.

[19] In addressing the use of state-developed separations procedures for intrastate ratemaking purposes in *Hawaiian Telephone Company v. Public Utilities Commission of the State of Hawaii*, the Court held that state authority has been preempted by the Commission. "This history, the statutory framework underlying it, and the need for consistent apportionment between interstate and intrastate operations, are sufficient to convince us that FCC Order 81-312 necessarily preempted any independent separations procedures of the Hawaii PUC." *See Hawaiian Telephone Company v. Public Utilities Commission of the State of Hawaii*, 827 F.2d 1264, 1275-76 (9th Cir. 1987), *cert. denied*, 487 U.S. 1218 (1988). *Also see Crockett Tel. Co. v. FCC,* 963 F.2d 1564 (D.C. Cir. 1992), and 47 U.S.C. § 221(c).

entire concept of a unified national approach to jurisdictional separations." Thus, whatever the Commission does, it should also recognize that state jurisdiction over inter/intrastate cost assignments remains unchanged.

## IV. CONCLUSION

For the above-stated reasons, CenturyLink recommends that the Commission take the actions described herein.

Respectfully submitted,

**CENTURYLINK**

By: /s/ Timothy M. Boucher

Timothy M. Boucher
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
303-992-5751
Timothy.Boucher@CenturyLink.com

Thomas Dethlefs
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
303-992-5791
Thomas.Dethlefs@CenturyLink.com

Its Attorneys

May 24, 2017